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In re Application of	:	DECISION ON PETITION
HERSH, et al.	:	
Application No.: 09/701,797	:	UNDER 37 CFR 1.47(a)
PCT No.: PCT/US99/12433	:	
Int. Filing Date: 03 June 1999	:	AND RENEWED
Priority Date: 03 June 1998	:	
Attorney Docket No.: PA1675US	:	PETITION UNDER
For: METHOD FOR INCREASED CONCURRENCY	:	
IN A COMPUTER SYSTEM	:	37 CFR 1.137(b)

This decision is in response to applicant's "Renewed Petition Under 37 CFR 1.137(b)" filed 30 July 2002.

### **BACKGROUND**

On 30 May 2002, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.137(b) for revival of the present application. Applicant was afforded two months to file any request for reconsideration.

On 30 July 2002, applicant filed the present "Renewed Petition Under 37 CFR 1.137(b)." The renewed petition is found to also contain a petition under 37 CFR 1.47(a). Each item will be discussed in turn below.

### **DISCUSSION**

#### **A. Petition Under 37 CFR 1.47(a)**

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(I), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to items (1), applicant has previously authorized the charging of additional fees required under 37 CFR 1.16 and 1.17 to Deposit Account No.: 06-0600. Therefore, the required petition fee of \$130.00 will be so charged.

409.03(c) Legal Representatives of Deceased Inventor Not Available

37 CFR 1.47 should not be considered an alternative to 37 CFR 1.42 or 35 U.S.C. 117 since the language "cannot be found or reached after diligent effort" has no reasonable application to a deceased inventor. In re Application Papers Filed September 10, 1954, 108 USPQ 340 (Comm'r Pat. 1955). See 37 CFR 1.42 and MPEP § 409.01. However, 37 CFR 1.47 does apply where a known legal representative of a deceased inventor cannot be found or reached after diligent effort, or refuses to make application. In such cases, the last known address of the legal representative must be given (see MPEP § 409.03(e)).

In the present case, the inventor's original legal representative is deceased. Thus, the petition under 37 CFR 1.47 to accept the application without the legal representative is inappropriate pursuant to MPEP 409.03(c). Applicant must seek Mr. Sullivan's current legal representative. The petition provides no evidence that the current legal representative of the deceased inventor could not be found or reached after diligent effort or has refused to join in the present application. Accordingly, the petition under 37 CFR 1.47(a) is dismissed.

**B. Petition Under 37 CFR 1.137(b)**

As detailed in the decision mailed 30 May 2002, a petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant previously satisfied items (2), (3) and (4) above.

Regarding item (1), a proper reply in the present case would have been an executed declaration compliant under 37 CFR 1.497(a)-(b) and, if the legal representative refused to sign or could not be reached after diligent effort, a grantable petition under 37 CFR 1.47(a). As applicant's petition under 37 CFR 1.47(a) has been dismissed for the reasons stated above, the required reply has not been filed.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

**CONCLUSION**

Applicant's petition under 37 CFR 1.47(a) is **DISMISSED**.

Applicant's renewed petition under 37 CFR 1.137(b) is **DISMISSED**.

If reconsideration on the merits of these petitions is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petitions Under 37 CFR 1.47(a) and 37 CFR 1.137(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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